

HUMAN SERVICES BOARD

INTRODUCTION

FINDINGS OF FACT

1. The petitioner is a fifty-three year old woman who was appointed the guardian of her two minor grandchildren by a state probate court in December of 1998. Those children live with the petitioner and she exercises parental control over them. The petitioner has obtained ANFC benefits of \$565 per month (their father pays \$436 per month in child support which is currently assigned to the Department) for the two children and applied for Food Stamp benefits for them in February of 2000. As part of the application process, the petitioner was required to report her own income and resources to the Department. She reported that she recently lost her job and

currently has unemployment compensation insurance of \$256 per week and resources in the form of stocks, certificates of deposit and retirement accounts of \$33,825.

2. The Department reviewed the petitioner's application and determined that she had to be included in her grandchildren's Food Stamp household and that her resources had to be counted in determining the eligibility of the children. As the maximum resource amount for a three person household is \$2,000 the petitioner was notified on March 7, 2000 that she and her grandchildren are ineligible to receive Food Stamps.

3. The petitioner appealed this decision citing its unfairness to her. She has been forced to use her own resources to care for her grandchildren which has become particularly difficult since she lost her job. She has spent over \$10,000 of her resources on her own and their support since she originally applied for Food Stamps. She agreed to be the grandchildren's guardian in order to avoid their becoming wards of the state and placing a burden on the taxpayers. In fairness, then, she feels that her grandchildren should be able to receive some help from the state with their food and that she should be relieved of this financial responsibility.

ORDER

The decision of the Department is affirmed.

REASONS

The Department of Social Welfare administers the federally authorized and funded Food Stamp program and has adopted regulations regarding household composition and resource standards that mirror the regulations found in 7 Code of Federal Regulations §§ 273.1 and 273.8. The Department's regulations do require that the "maximum allowable resources, including both liquid and nonliquid assets, of all members of the household shall not exceed \$2,000 for the household." F.S.M. 273.8(b). The definition of "liquid resources" include stocks, savings certificates and retirement accounts. F.S.M. 273.8(c)(1). Retirement accounts are valued by subtracting any amounts which would have to be paid as a penalty for early withdrawal of funds. F.S.M. 273.8(c)(1).

The petitioner does not dispute that her resources would be countable if she were applying for Food Stamps. Her contention is that she should not be forced to apply with her grandchildren for Food Stamps and that they should be

considered their own separate household for Food Stamp purposes.

While the petitioner's claim is sympathetic, there is no provision for separating out a grandparent who is under sixty years of age from the minor grandchildren with whom she lives and with whom she assumes a parental role. In fact, the regulations specifically forbid the exclusion of any adult in a household--regardless of relationship--who lives with minor children, acts in a parental capacity and upon whom they are dependent in some way:

Special Definition

1. The following individuals living with others or groups of individuals living together shall be considered as customarily purchasing food and preparing meals together, even if they do not do so:

. . .

B. Children (excluding foster children) under 18 years of age who live with and are under the parental control of a household member other than their parent. Children are considered to be under parental control for purposes of this provision if the children are financially or otherwise dependent on a member of the household. . .

F.S.M. 273.1(a)(2)

While it is doubtful that the petitioner has an obligation as the children's guardian to provide for them out of her own pocket, she is nevertheless charged by state

guardianship law with providing "for the maintenance of the ward . . . according to his condition and property." 14 V.S.A. § 2797. As such, it must be found that the children are, if not strictly "financially" dependent on the petitioner, then at least "otherwise" dependent on her because she is charged with maintaining them under law. As such, the petitioner fits the definition of persons who must be included in the household for purposes of Food Stamp eligibility and, as was stated earlier, is liable to have her resources counted when determining the household's eligibility.

It was pointed out to the petitioner by the hearing officer that if her children were to become wards of Social and Rehabilitation Services (SRS) and she were to become the foster placement for them, her resources would not be counted under the above regulation. The petitioner indicated that she understands that possibility but it is not one she wishes to pursue. As the decision of the Department is in accordance with its regulations, the Board is bound to uphold its decision. 3 V.S.A. § 3091(d), Fair Hearing Rule 17.

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